



MONTGOMERY COUNTY ETHICS COMMISSION

Advisory Opinion No. 04-01

A County councilmember asks whether he must recuse himself from participating in funding decisions involving a non-profit organization if he serves on that organization's board of directors. We conclude that the councilmember can serve on the board of a non-profit, but the ethics law prohibits him from participating in any matter, including funding decisions, if that non-profit is a party to the matter.

The councilmember states that he has received requests to serve on the boards of directors of non-profit organizations that receive substantial County funding. He is concerned about a potential conflict of interest and asks if he would have to recuse himself from participating in any discussions and votes on County funding for these organizations.

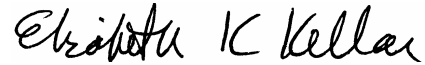
We conclude that the councilmember would have a potential conflict of interest in this situation and would therefore have to recuse himself.¹ Section 19A-11(a)(2)(A) provides that, absent a waiver, a public employee must not participate in any matter if that employee knows or reasonably should know that any party to that matter is a business in which the employee is an officer, director, trustee, partner, or employee.

But there are two possible exceptions to this prohibition. First, § 19A-11(b)(4) states that this prohibition does not apply to a public employee if the County Executive or the County Council appoints the employee to serve as an officer, director, trustee on the organization to represent the public interest. Second, § 19A-11(b)(5) states that this prohibition does not apply to a public employee who is an officer, director, or trustee, if the employee discloses the relationship, is not compensated by the organization, and has no (A) managerial responsibility or fiduciary duty to the organization; (B) authority to approve the organization's budget; (C) authority to select any officer or employee of the organization; or (D) authority to vote on matters as a member of the governing body of the organization.

¹ We assume that service on the board of directors would be uncompensated. If not, there might also be a secondary employment issue under the ethics law.

In conclusion, the councilmember can serve on the board of directors of a non-profit organization. But the councilmember cannot participate in any matter if that nonprofit is a party to that matter, unless he obtains a waiver or one of the exceptions outlined above applies.

FOR THE COMMISSION:


Elizabeth K. Kellar, Chair

Date: February 20, 2004